

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Tony Hammond

Competitive Product Prices
Global Expedited Package Services 7 Contracts
Negotiated Service Agreements

Docket No. MC2016-196

Competitive Product Prices
Global Expedited Package Services 7 Contracts (MC2016-196)
Negotiated Service Agreement

Docket No. CP2016-280

ORDER ADDING GLOBAL EXPEDITED PACKAGE SERVICES 7
TO THE COMPETITIVE PRODUCT LIST
AND DESIGNATING BASELINE AGREEMENT

(Issued September 27, 2016)

I. INTRODUCTION

The Postal Service seeks to add Global Expedited Package Services 7 (GEPS 7) to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

¹ Request of the United States Postal Service to Add Global Expedited Package Services 7 Contracts to the Competitive Products List, and Notice of Filing (Under Seal) of Contract and Application for Non-Public Treatment of Materials Filed Under Seal, September 14, 2016 (Request).

II. BACKGROUND

Contracts under the GEPS products offer price incentives to mailers that use Priority Mail Express International (PMEI), Priority Mail International (PMI), Commercial ePacket, and/or First-Class Package International Service (FCPIS). The Commission added GEPS 1, GEPS 2, GEPS 3, GEPS 4, GEPS 5, and GEPS 6 to the competitive product list in Order Nos. 86, 290, 503, 657, 2844, and 3365 respectively.²

On September 14, 2016, the Postal Service filed the Request, supporting documents, and the negotiated service agreement (Agreement) it seeks to have designated as the baseline agreement for the GEPS 7 product. The supporting documents include:

- A statement of supporting justification for adding GEPS 7 to the competitive product list
- A copy of the Agreement
- A copy of Governors' Decision No. 11-6
- Proposed revisions to the Mail Classification Schedule (MCS)
- A certification of compliance with 39 U.S.C. § 3633(a)
- Financial workpapers

See Request, Attachments 1-5. Also, the Postal Service submitted an application for non-public treatment of materials requesting that unredacted portions of the Agreement, customer-identifying information, and related financial information remain under seal. Request, Attachment 6.

² See *respectively*, Docket No. CP2008-5, Order Concerning Global Expedited Package Services Contracts, June 27, 2008 (Order No. 86); Docket No. CP2009-50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290); Docket Nos. MC2010-28 and CP2010-71, Order Approving Global Expedited Package Services 3 Negotiated Service Agreement, July 29, 2010 (Order No. 503); Docket No. CP2011-54, Order Approving Global Expedited Package Services 4 Negotiated Service Agreement, January 24, 2011 (Order No. 657); Docket Nos. MC2016-15 and CP2016-20, Order Adding Global Expedited Package Services 5 Contracts to the Competitive Product List and Approval of Designation as Baseline Agreement, November 25, 2015 (Order No. 2844); Docket Nos. MC2016-149 and CP2016-188, Order Adding Global Expedited Package Services 6 Contracts to the Competitive Product List and Approval of Designation as Baseline Agreement, June 14, 2016 (Order No. 3365).

In its Request, the Postal Service states that the Agreement is similar to contracts included under the GEPS 6 product. Request at 3. However, it notes that the GEPS 7 contract does not include a penalty for failing to meet the agreed-upon minimum commitment.³ The Postal Service explains that it considers the Agreement to fit within the existing MCS language for GEPS. Request at 3. The Postal Service requests that the Commission add the Agreement to the MCS as the baseline agreement for the GEPS 7 product. *Id.*

The Agreement is intended to take effect October 1, 2016. *Id.* It is set to expire September 30, 2017. *Id.* Attachment 4 at 3.

On September 15, 2016, the Commission provided public notice of the Request, established the instant dockets, appointed a Public Representative, and invited comments on whether the Postal service's filings are consistent with applicable statutory and regulatory requirements.⁴

III. COMMENTS

The Public Representative filed comments on September 22, 2016.⁵ No other interested person submitted comments. The Public Representative states that she reviewed the Agreement, statement of supporting justification, and financial data and model filed under seal. PR Comments at 2. Based on that review, she concludes that GEPS 7 should be categorized as a competitive product and added to the competitive product list. *Id.* She asserts that the Agreement should generate sufficient revenue to cover its attributable costs and meet the requirements of 39 U.S.C. § 3633(a). *Id.* at 2-3.

³ *Id.* Other differences include revising the payment method in Article 2, deleting references to “Option A” and “Option B” throughout the Agreement, and revising and deleting existing articles. See Request, Attachment 4.

⁴ See Docket Nos. MC2016-196, *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, September 15, 2016.

⁵ Public Representative Comments on Notice and Order Concerning Additional Global Expedited Package Services 7 Negotiated Service Agreement, September 22, 2016 (PR Comments).

The Public Representative suggests that the Postal Service clarify two provisions in the Agreement concerning postage updates and minimum commitment. *Id.* at 3. However, she maintains that the Agreement meets all necessary requirements for approval. *Id.*

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the Agreement, supporting documents, financial analyses provided under seal, and the Public Representative's comments. In its analysis, the Commission must add GEPS 7 to either the market dominant or competitive product list under 39 U.S.C. § 3642. If it finds GEPS 7 to be a competitive product, it must ensure that the Agreement complies with 39 U.S.C. § 3633(a) and designate the Agreement as the baseline agreement for the GEPS 7 product.

Product classification. The Commission must classify the GEPS 7 product and add it to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.34(a). Before adding a product to the competitive product list, the Commission must consider three criteria. First, the Commission must find that the Postal Service does not “exercise[] sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.” 39 U.S.C. § 3642(b)(1); see 39 C.F.R. § 3032.32(d). Second, the Commission must ensure that the product is not covered by the postal monopoly. 39 U.S.C. § 3642(b)(2); 39 C.F.R. § 3020.32(e). Third, the Commission must consider the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. §§ 3020.32(f)-(h).

The Postal Service asserts that when negotiating GEPS contracts, its bargaining position is constrained by other shippers who provide similar services, which prevents

the Postal Service from increasing prices or decreasing service. Request, Attachment 1 at 2. It notes that PMEI, PMI, and FCPIS have all been classified as competitive because they are excluded from the postal monopoly and are competitive in their respective markets. *Id.* at 3. The Postal Service asserts it cannot raise prices substantially above costs or decrease quality or output without risking loss of business to large competitors that offer international express and package delivery services. *Id.* It contends that small businesses will benefit because GEPS 7 contracts will provide pricing incentives that reduce costs. *Id.* at 5.

The Commission finds that the Postal Service does not exercise sufficient market power that it can effectively set the price of the proposed product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. First, the GEPS 7 Contracts product bundles existing competitive product offerings. Second, major competitors exist in the market for PMEI, PMI, and FCPIS, which are widely available to United States customers. Third, customers such as the contract partner will likely be interested in the GEPS 7 product. Fourth, there is no evidence of an adverse impact on small businesses. For these reasons, having considered the relevant statutory and regulatory requirements and the Postal Service's supporting justification, the Commission finds that the GEPS 7 Contracts product is appropriately classified as competitive and adds it to the competitive product list.

Product list and MCS language. The Postal Service proposes conforming revisions to MCS section 2510.3, which covers GEPS Contracts. See Request at 2; Request, Attachment 3. The Commission approves these changes and revises the competitive product list and MCS accordingly.

Cost considerations. Because the Commission finds that GEPS 7 is a competitive product, the Postal Service must also show that the Agreement covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs.

39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the Agreement exceeds its attributable costs, the Agreement is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if the Agreement covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Request includes a certified statement that the Agreement complies with the requirements of 39 U.S.C. § 3633(a). Request, Attachment 5. The Postal Service also filed supporting revenue and cost data showing that the Agreement is expected to cover its costs. Based on its review of the record, the Commission finds that the rates should cover the Agreement's attributable costs. See 39 U.S.C. § 3633(a)(2). For this reason, the Commission concludes that the Agreement should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, the Commission finds that the Agreement is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See *also* 39 C.F.R. § 3015.7(c).

The Commission will review the cost coverage of the Agreement, the GEPS 7 product, and the contribution of competitive products as a whole to the Postal Service's institutional costs in the Annual Compliance Determination to ensure that they continue to comply with 39 U.S.C. § 3633(a).

In conclusion, a preliminary review of the Agreement indicates that it is consistent with section 3633(a).

Baseline agreement. The Commission designates the Agreement as the baseline agreement for the GEPS 7 product. Following current practice, in any future request to add a new negotiated service agreement to the GEPS 7 product, the Postal Service shall identify all significant differences between the new negotiated service agreement and the baseline agreement. Significant differences include terms and

conditions that impose new obligations or new requirements on any party to the negotiated service agreement. The docket referenced in the caption of the request should be Docket No. MC2016-196. Consistent with current practice, the request should include a redacted copy of Governors' Decision 11-6.

Other considerations. The Agreement is intended to take effect October 1, 2016. Request at 3. The Postal Service shall promptly notify the Commission if the Agreement's effective date changes. The Agreement is set to expire on September 30, 2017. *Id.* Attachment 4 at 3. If the Agreement terminates before the scheduled expiration date, the Postal Service shall promptly notify the Commission in this docket.

The Public Representative recommends clarifying provisions in Articles 10 and 14 of the Agreement. PR Comments at 3. The Commission appreciates the thoughtful and thorough comments of the Public Representative. The Commission finds, however, that the articles discussed by the Public Representative do not impact the Commission's finding that GEPS 7 is a competitive product that complies with 39 U.S.C. § 3633(a).

In conclusion, the Commission approves GEPS 7 as a new product and designates the Agreement as the baseline agreement for the GEPS 7 product. Revisions to the competitive product list and the MCS appear below the signature of this Order and are effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

1. Global Expedited Package Services 7 (MC2016-196 and CP2016-280) is added to the competitive product list as a new product. Revisions to the competitive product list and the MCS appear below the signature of this Order and are effective immediately.
2. The Commission designates the Agreement as the baseline agreement for the GEPS 7 product

3. The Postal Service shall promptly notify the Commission if the Agreement's effective date changes.
4. If the Agreement terminates before the scheduled expiration date, the Postal Service shall promptly notify the Commission in this docket.
5. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Ruth Ann Abrams
Acting Secretary

CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix B to 39 C.F.R. part 3020, subpart A—Competitive Product List. These changes reflect the Commission’s order in Docket Nos. MC2016-196 and CP2016-280. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Appendix B to subpart A of Part 3020—Competitive Product List

Negotiated Service Agreements*

Outbound International*

Global Expedited Package Services (GEPS) Contracts

GEPS 7

CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part B—Competitive Products
2000 Competitive Product List

Negotiated Service Agreements*

2510 Outbound International

2510.3 Global Expedited Package Services (GEPS) Contracts

2510.3.6 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- GEPS 7
Baseline Reference
Docket Nos. MC2016-196 and CP2016-280
PRC Order No. 3542, September 27, 2016
Included Agreements
